

CHAPTER 15 – FULL FAITH AND CREDIT FOR DOMESTIC VIOLENCE PROTECTION ORDERS

STATUTORY REFERENCES: **RSA 173-B:13 (Orders Enforceable)**
 RSA 458:16 (Temporary Orders)

INTRODUCTION

"Full Faith and Credit" refers to Section 2265 of the Violence Against Women Act (18 U.S.C. Section 2265). This section provides that any valid protection order issued in one state is to be treated by another state as if it were one of its own, and enforced in the same manner as an order issued in-state.

Since 1994, the Violence Against Women Act has required every jurisdiction in the United States to recognize and enforce valid protection orders. The jurisdictions include all states and political subdivisions, tribal governments, the District of Columbia, and commonwealths, territories and possessions (e.g., Puerto Rico, Guam). New Hampshire adopted its Full Faith and Credit section in 1993.

The purpose of the Full Faith and Credit section is to enable a victim to travel safely (whether for work, pleasure or out of fear for safety), without having to establish jurisdiction in each new location, and without having to secure a new order in each location. Doing so, of course, would require notification to a defendant which full faith and credit is intended to preclude. The victim need only apply once for a protection order, which can then be enforced throughout the country without informing the defendant of the victim's whereabouts. The purpose of Section 2265 would be undermined if the defendant were apprised of the victim's new location.

The laws of the *issuing jurisdiction* govern the following: the persons who are eligible for a protection order, the length of time the order will be in effect, and the relief that may be granted. The *enforcing jurisdiction* only determines how a violation will be enforced. For example, if another state court issued a three year order, it would have to be enforced in New Hampshire for the full three years, even though we would only issue one year orders. Additionally, the enforcing state applies only its own laws and procedures for enforcement of violations of protection orders. In New Hampshire, for example, we have "presumptive arrest" whereas Wisconsin, for example, has "mandatory arrest". If a defendant violates a Wisconsin protection order in New Hampshire, we would apply the presumptive arrest standard, since we do not have mandatory arrest. On the other hand, a defendant violating a New Hampshire protection order in Wisconsin would be subject to

mandatory arrest.

As judges and court officials, we must know how to issue orders that will be enforceable in foreign jurisdictions, and we must also be able to recognize which orders issued from other jurisdictions are entitled to enforcement in New Hampshire. Of course, all orders issued in New Hampshire under RSA 173-B are valid throughout the State, regardless of which court issued them.

NOTE: The Violence Against Women Act (VAWA) does not address protective orders issued by military authority. State courts should develop agreements with local military installations concerning their enforcement of state court protection orders.

A. PROTOCOL FOR ENFORCEMENT OF FOREIGN PROTECTION ORDERS

PROTOCOL 15-1

For an order issued in another jurisdiction to be entitled to enforcement in New Hampshire (i.e., given full faith and credit), the order must be a "valid protection order". This term of art means the following:

- a. The issuing court had jurisdiction over the parties and subject matter;
- b. The defendant was given notice and an opportunity to participate at a hearing;

COMMENT

The defendant is not required to participate in a hearing, but, instead, must simply be given the opportunity to participate. Default orders are entitled to full faith and credit.

- c. If it is an *ex parte* order, the defendant must be given notice and the opportunity for a hearing within a reasonable time frame;

COMMENT

An *ex parte* order is entitled to enforcement even if the hearing has not yet occurred, so long as the defendant has received notice.

- d. The order must have been issued in response to a specific petition or motion for protection; and
- e. The order must have been issued for the purpose of preventing violent or threatening acts or harassment against, or contact or communication with or physical proximity to, a protected person.

PROTOCOL 15-2

A Foreign Protection Order must be enforced as written.

COMMENT

Because the issuing jurisdiction determines who may obtain a protection order, its duration and the relief provided, a New Hampshire court may not decline to enforce an order that was properly issued in another jurisdiction, even if we could not have issued such an order in the first instance. For example, if an order were issued for three years in another state, we must enforce it throughout the three year term even though our orders could only be issued for one year. We must also enforce all of the relief set forth in the protection orders, even if RSA 173-B does not provide similar relief.

B. PROTOCOL FOR REGISTRATION OF FOREIGN PROTECTION ORDERS

PROTOCOL 15-3

The following procedures shall be utilized if a victim who has received a protection order from another jurisdiction wishes to have the order registered in New Hampshire:

- a. The clerk (or designee) shall ask the victim for a certified copy of the protection order. If the victim does not have a certified copy of the order, the clerk shall contact the court which issued the order and request that a copy be faxed.

COMMENT

If the court receives a faxed copy from another jurisdiction, it shall be treated as though it were certified.

- b. The clerk shall review the order to determine if it meets the criteria under 18 U.S.C. 2265 and 2266, namely that the victim qualifies as a protected party, the defendant had notice and an opportunity to be heard, and the order is intended to prevent abuse (as described above). As RSA 173-B:13, II states, there shall be a presumption of validity where an order appears facially valid. If the clerk has any question about whether the order qualifies, the clerk shall consult with a judge or may call the issuing court.

COMMENT

Many jurisdictions are now using standard full faith and credit language, either in

the body of the order or as an attachment to the order, to facilitate easy recognition by other jurisdictions, and thus ready enforcement of foreign orders to help victims maintain their safety. New Hampshire utilizes such language in its temporary and final order forms.

- c. The victim shall be given a Foreign Protection Order Affidavit (AOC-258-248 (12/99)) which must be signed under oath, attesting to the current status of the order as written.
- d. The clerk shall verify that the victim wishes for the order to be registered (i.e., entered into the State Registry). The clerk shall explain that the order will be accessible by law enforcement throughout the State.

COMMENT

No jurisdiction has authority to enter another jurisdiction's order into NCIC.

- e. Staff shall add the PNO number to the Foreign Protection Order.
- f. The clerk should offer to call the local crisis center to request that a victim advocate be present to review all the implications of registering a foreign protection order, and to discuss further safety planning with the victim. At a minimum, the clerk should provide a local crisis center brochure to the victim.
- g. The foreign protection order shall be attached to the Foreign Protection Order Affidavit and faxed to the Administrative Office of the Courts for entry into the State Registry.
- h. The victim shall be given a copy of each, as well as the appropriate law enforcement agencies (where the victim will be residing or working, or as may otherwise be appropriate).
- i. Under NO circumstances shall the defendant be notified that a foreign protection order is being registered in New Hampshire.

COMMENT

Again, it is critical to remember that a victim may be fleeing to New Hampshire for safety reasons. If we were to notify the abuser by advising that the order will be registered in New Hampshire, we would be helping the abuser to locate the victim, thus undermining the very goal of full faith and credit. The underlying purpose of Section 2265 is to enable a victim to obtain an order in one jurisdiction, and then travel across jurisdictional lines with safety, without needing to request a new protection order. Once a valid order has been issued, the victim is entitled to have the order enforced throughout the country. Because the victim is not applying for a new order, there is no need to serve the order or otherwise notify the abuser of the victim's new location.

PROTOCOL 15-4

The foreign protection order does not need to be registered to be enforced in New Hampshire.

COMMENT

Neither state nor federal law requires registration (i.e., entry into New Hampshire's State Protection Order Registry or NCIC) for enforcement. The purpose of registration is to assist law enforcement in recognizing and enforcing valid orders, and to assist the court with easy understanding if a violation is presented. Registration, however, is not a prerequisite to enforcement in New Hampshire.

PROTOCOL 15-5

The foreign protection order does not need to be certified to be enforced in New Hampshire. Our statute does not require that an order be certified for a victim to be entitled to protection (see RSA 173-B:13, II, III), nor does Section 2265 of the Violence Against Women Act. However, certification of the order is necessary for registration under New Hampshire law (see RSA 173-B:13, IV).

COMMENT

The purpose of certification is to help the enforcing state ascertain the validity of the order. If the victim's order is not certified, the clerk should follow the procedure set forth in Protocol 15-3 above.

PROTOCOL 15-6

A mutual protection order issued by a foreign jurisdiction against a person who has received a protection order shall be accorded full faith and credit only if:

- a. A cross or counter petition, complaint, or other written pleading was filed seeking such protection order; and
- b. The court made specific findings of domestic or family violence by both parties and that each party was entitled to such order.

COMMENT

See RSA 173-B:13, VII. There is a presumption against enforcement of mutual protection orders, even if facially valid. Federal and state law accord full faith and credit of mutual protection orders only if the above requirements are met.

C. PROTOCOL FOR ISSUANCE OF NEW HAMPSHIRE PROTECTIVE ORDERS

PROTOCOL 15-7

To facilitate recognition and enforcement of New Hampshire protective orders in other jurisdictions, it is important to adhere to the following:

- a. All orders properly issued under RSA 173-B (except telephonic orders issued to law enforcement after hours) are entitled to full faith and credit throughout the country. The certification of compliance with 18 U.S.C. Section 2265 shall be attached to all orders.

COMMENT

New Hampshire's emergency telephonic orders issued during non-court business hours are not entitled to full faith and credit because there is no statutory provision for a hearing for the defendant, since such orders expire at the close of the next business day. These orders are enforceable throughout New Hampshire, but not outside the state.

- b. The clerk shall ensure that each order is completed properly, signed, dated, that the relationship of the victim and defendant is noted, and that the judge's name is printed and the telephone number of the court included.
- c. The clerk shall provide the victim with at least one certified copy of the order to carry at all times.
- d. All procedures for registering orders (see above) should be followed carefully.
- e. At the conclusion of the final hearing, the judge should advise both parties that the order will be enforceable throughout the country, that the Federal Gun Control Act may apply (if it does, significant penalties for violations will attach), and that it is also a federal crime to cross state lines to commit domestic violence.